

## Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **201228024**

Release Date: 7/13/2012

Index Number: 1362.04-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-144665-11

Date:

February 07, 2012

X =

Trust 1 =

Trust 2 =

D1 =

Dear :

This responds to a letter dated October 14, 2011, and subsequent correspondence, submitted on behalf of X by its authorized representatives requesting a ruling under § 1362(f) of the Internal Revenue Code.

X made an election to be treated as an S corporation. X's election was inadvertently terminated effective D1, when Trust 1 ceased to qualify as an eligible shareholder by failing to make an electing small business trust ("ESBT") election. Trust 1 transferred its X stock to Trust 2, which held the X stock until it transferred the stock to two eligible shareholders. X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of

§ 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on D1 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D1 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). Moreover, each of Trust 1 and Trust 2 will be treated as an ESBT during the period for which it held X stock, provided each trust files income tax returns for such period consistent with an ESBT election having been made.

This ruling is conditioned upon X and all its shareholders treating X as having been an S corporation for the termination period and thereafter. Moreover, the shareholders of X must include their pro rata share of the separately stated and nonseparately computed items of income, loss, deduction, or credit as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

/s/

Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: